

100TH CONGRESS }
2d Session }

SENATE

{ REPORT
100-437

FEDERAL EMPLOYEES LEAVE SHARING ACT
OF 1988

R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2140

TO AMEND TITLE 5, UNITED STATES CODE, TO PERMIT VOLUN-
TARY TRANSFERS OF LEAVE BY FEDERAL EMPLOYEES WHERE
NEEDED BECAUSE OF A MEDICAL OR OTHER EMERGENCY SITU-
ATION



JULY 28, 1988.—Ordered to be printed

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FEDERAL EMPLOYEES LEAVE SHARING ACT OF 1988

JULY 28, 1988.—Ordered to be printed

Mr. GLENN, from the Committee on Governmental Affairs,
submitted the following

REPORT

[To accompany S. 2140]

The Committee on Governmental Affairs, to which was referred the bill (S. 2140) to amend title 5, United States Code, to permit voluntary transfers of leave by Federal employees where needed because of a medical or other emergency situation, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

The purposes of this legislation are (1) to allow Federal employees to transfer annual leave to their co-workers who may be facing a family or medical emergency and (2) to establish voluntary leave bank programs.

In summary, S. 2140, as amended by the Committee, establishes a new subchapter III and subchapter IV of chapter 63 of title 5, United States Code.

Subchapter III authorizes the transfer of annual leave to Federal employees who have exhausted their own sick and annual leave and are facing a prolonged personal or family medical emergency.

Subchapter IV authorizes the establishment of voluntary leave bank programs under which a Federal employee may contribute annual leave to a leave bank established by the employee's agency. An employee experiencing a personal or family medical emergency may apply for the leave from the leave bank.

The bill exempts certain agencies from the government-wide leave transfer program but requires those agencies to establish their own leave transfer programs consistent with the government-wide transfer program.

The bill establishes government-wide criteria for determining who may receive leave from an individual or a leave bank as well as who may donate or contribute leave, and circumstances that constitute a personal emergency.

Both the leave transfer and leave bank programs are authorized to run for a period of five years after their commencement date.

II. BACKGROUND

When federal employees become severely ill, they can use both annual and sick leave and request up to thirty days of advanced sick leave from their agencies. Once all leave options are exhausted, unless they are eligible for disability retirement benefits, they may either request leave without pay or quit the government. In cases where constant care for a terminally ill child or spouse is necessary, the options are the same. The choices can be extremely difficult, and the financial impact of a major medical problem or family emergency without any income or health insurance coverage can be devastating for federal workers and their families. Leave sharing will provide a humanitarian solution to this problem by allowing employees to continue receiving both pay and benefits while attending to their own illness or that of a family member.

Sharing leave with co-workers who need additional leave for personal or family emergencies is not a new initiative. Over the past fifteen years, an increasing number of state and local jurisdictions have adopted leave sharing programs, but they are virtually nonexistent in the private sector. Instead, private sector employers use short-term disability insurance to replace income loss by employees because of non-work related disabilities. A short-term disability plan usually replaces 50 to 70 percent of earnings. Payments typically begin after a one week waiting period and last up to 26 weeks. These plans are often used to bridge the gap between the onset of disability and the initiation of long-term disability benefits.

Federal employees have no short-term disability coverage as such and must rely on sick leave alone for short-term illnesses and the disability provisions of the Civil Service Retirement System or the Federal Employees Retirement System for long-term illnesses. In the absence of a short-term disability plan, leave sharing will close a gap in the federal worker's current disability insurance coverage for personal medical emergencies. It also can be used to allow em-

ployees to attend to seriously or terminally ill spouses and dependents.

The first leave sharing demonstration project was prompted by a group of concerned Internal Revenue Service (IRS) employees who wanted to donate sick and annual leave to Joe and Shannon Chiles, both IRS employees. Mrs. Chiles was a cancer victim. Because leave sharing was prohibited by law, Congressman William H. Lehman of Florida, introduced legislation which was passed in 1986 to allow a one-time leave transfer arrangement for the couple. The donated leave allowed the Chiles couple to receive their salaries, while Mr. Chiles stayed at home and cared for his wife and children. In 1987, as a result of Congressman Lehman's actions and the experience of the Chileses, the Congress authorized OPM to conduct an experimental leave sharing program limited to three employees. From 32 agencies, 242 applications were submitted to OPM for consideration. An IRS examiner, a Department of Energy employee, and a Department of Army computer programmer were selected to participate in the pilot program. When the agencies requested leave donations for these beneficiaries, numerous federal employees responded by generously donating their vacation time and sick leave. Given the overwhelming response to the temporary leave sharing program, Congress then amended the 1987 Continuing Resolution to allow OPM to continue testing the leave sharing concept government-wide through Fiscal Year 1988 with the expectation of enacting permanent legislation.

III. LEGISLATIVE HISTORY

Legislation to expand the temporary leave transfer program was first introduced in the House of Representatives by Congressman Frank Wolf during the 100th Congress. H.R. 2487, the Federal Employees Leave Act of 1987, would essentially broaden OPM's leave transfer program to all federal agencies for five years. The bill would also authorize an experimental program to provide outstanding employees with additional leave as a reward for performance. Congressman Gary Ackerman, Chairman of the Subcommittee on Compensation and Employee Benefits, House Post Office and Civil Service Committee, held a hearing on August 4, 1987 to consider H.R. 2487.

On December 14, 1987, Mr. Ackerman introduced H.R. 3757, the Federal Employees Leave Transfer Act of 1987, which reflects some of the changes suggested at the hearing. The bill would direct the Office of Personnel Management to establish a three-year government-wide leave transfer program under which federal employees could donate some of their annual leave to needy coworkers facing a personal or family medical emergency. It also would authorize OPM to select three agencies to test alternative leave transfer programs, an agencywide leave pool that would distribute leave as needed, and two agencywide programs that would include both annual and sick leave donations. H.R. 3757 was passed by the House of Representatives on March 22, 1988 by a vote of 408 to 9. The bill was received in the Senate and referred to the Senate Governmental Affairs Committee on March 24, 1988.

An identical measure to H.R. 2487, S. 1595, the Federal Employees Leave Act of 1987, was introduced by Senator Domenici on August 5, 1987. On March 4, 1988, Senator Pryor, Chairman of the Subcommittee on Federal Services, Post Office, and Civil Service, Senate Governmental Affairs Committee, introduced S. 2140, the Federal Employees Leave Bank Act of 1988. This bill would establish a federal leave bank system, much akin to an insurance program. Under this proposal, federal employees could insure themselves against a loss of income and benefits in the event of a personal or family medical emergency by donating a minimum amount of annual leave to the bank. In a documented personal or family medical emergency, members could apply to the bank for additional leave after having exhausted their own leave. Each agency would establish one or more leave banks, each with a board to review and approve applications.

IV. COMMITTEE HEARINGS

On March 18, 1988, the Subcommittee on Federal Services, Post Office, and Civil Service held a hearing to examine the varying approaches to leave sharing and the issues involved in designating a permanent federal leave sharing program. Because the federal government has had limited experience with leave sharing, the Subcommittee heard from witnesses having practical experience in administering or using leave banks or leave transfer programs. The following individuals provided testimony:

Senator Pete V. Domenici, State of New Mexico;

Mr. Michael P. Dolan, Assistant Commissioner, Human Resources Management and Support, Internal Revenue Service, accompanied by Mr. Peter Scott, Deputy Chief Counsel, Internal Revenue Service;

Mr. Peter Rozantes, Section Chief, Department of Administrative Service, State of Connecticut;

Ms. Miriam K. Cameron, Director, Department of Employee Assistance Services, Montgomery County, Maryland Public Schools;

Mr. Richard Bank, Executive Director, Montgomery County Education Association;

Dr. Mollie H. Bowers, Associate Professor, Robert G. Merrick School of Business, University of Baltimore, and member of the National Academy of Arbitrators;

Mr. Anthony F. Ingrassia, Deputy Associate Director, Personnel Management and Support, Office of Personnel Management;

Mr. John Mulholland, Director of Field Services, American Federation of Government Employees;

Mr. Robert Tobias, President, National Treasury Employees Union; and

Ms. Beth Moten, Legislative Liaison, National Federation of Federal Employees.

Mr. Michael P. Dolan, Assistant Commissioner for Human Resources Management and Support for the Internal Revenue Service, described to the subcommittee how the Cincinnati, Ohio District Office handled leave donations in the case of Mr.

William Ault. Mr. Ault, a young revenue agent battling leukemia, was one of the three federal employees selected by the Office of Personnel Management to participate in the 1987 temporary voluntary transfer program. Overall, 293 District Office employees donated Bill Ault 6,812 hours of leave—an equivalent to over three years of leave. Mr. Ault used some 1,700 hours of donated leave before he passed away December 19, 1987. Although it was too early for the Internal Revenue Service to fully assess the costs associated with the Ault case, Mr. Dolan testified the program provided "organizational and personal benefits far in excess of the program's costs."

The State of Connecticut is in the unique position of having experience with both concepts of leave sharing: leave banks and direct employee donations. The State established its first sick leave bank program in 1979 for its Administrative and Residual bargaining unit which had requested the program in order to continue benefits for seriously ill employees. In 1984, the Education Administrative bargaining unit also requested leave bank coverage. A direct employee donation program was implemented in August, 1986 as a result of a request made by a number of employees who wanted to donate some of their vacation time to a seriously ill employee. Since then, eight more bargaining units have established direct employee donation programs. 35,000 out of 39,000 employees from the State of Connecticut are covered by either of these programs. Mr. Peter Ronzantes from the State's Personnel Division testified that "both programs have been successful because employee groups and their representatives have worked with management to ensure success."

The Department of Employee Assistance Services for the Montgomery County, Maryland Public Schools (MCPS) was begun in 1975 to help employees respond to health problems. As director of this program, Ms. Miriam Cameron has first-hand knowledge in working with the four sick leave banks established for MCPS personnel. In general, these banks provide their members sick leave after they have exhausted their basic sick leave benefit, especially in cases of catastrophic illnesses. Ms. Cameron testified that, in her view, leave banks were preferable to employee-to-employee donation programs. She felt that a direct employee donation program "destroys the philosophy of 'saving for a rainy day,' a concept encouraged by sick leave banks." Ms. Cameron also testified that the direct employee donation program which links the donor to the recipient "violates personal privacy." She is concerned that under a direct employee donation program "the needy, the poor, the proud, the shy, the seriously ill, and the stigmatized (the mentally and emotionally ill, persons with AIDS, addicts, alcoholics, victims of abuse, and others) may be reluctant to share their problems or their shame and to ask for help."

The first sick leave bank was established in 1971 for the teachers in the Montgomery County Public Schools. Mr. Richard Bank, the Executive Director of the Montgomery County Education Association (MCEA), told the Subcommittee that the teachers strongly support the leave bank because "they know that the availability of sick leave from the bank makes the difference in a time of desper-

ate need between dignity with a decent income and utter hopelessness." Over 85 percent of MCEA's members are enrolled. Mr. Bank explained that the teachers' bank does not grant leave for disabilities covered by worker's compensation, but it will advance an employee leave while a worker's compensation claim is being processed. In cases where the sick leave bank committee believes that the disability from work is permanent, the bank will advance the member limited leave with the condition that the employee makes an application for disability retirement.

The three recipients who participated in the 1987 temporary leave transfer program each received more than a year of leave donations. There is little dispute that the temporary program to date has been a success, but the subcommittee believes wider experience is needed to assess the administrative procedures and costs associated with implementing a government-wide program. However, leave banks, which have been implemented by the States of Connecticut, Florida, Alaska, and Maryland and by numerous local jurisdictions, have proven to be a stable source of protection against serious illness or injury and deserve to be tested in the federal government. To be successful, a voluntary leave transfer program depends upon the good will of employees. A leave bank system is more like an insurance program. It gives participating employees extra security in the event a personal or family medical emergency occurs. Under a bank system, an impartial board distributes leave to employees who meet standardized eligibility criteria. Thus, a leave bank system has greater promise of ensuring equity and fairness to participating members in need of extra leave for personal or family medical emergencies.

V. COMMITTEE ACTION

On May 16, 1988, the subcommittee reported S. 2140 to the Committee on Governmental Affairs with an amendment in the nature of a substitute, directing the Office of Personnel Management to authorize a program experimenting with both approaches for five years. S. 2140 directs the Office of Personnel Management to establish a voluntary leave transfer program under which federal employees may transfer annual leave to employees who require additional leave because of a personal or family medical emergency. An employee who applies for transferred leave could receive such leave only after the agency has approved his application and he has exhausted his own leave. The Office of Personnel Management is required to establish procedures to restore any unused transferred leave on a prorated basis to the donors.

The committee bill also directs the Office of Personnel Management to implement a demonstration project involving at least three agencies to experiment with a leave bank system. OPM is required to establish the leave bank regulations and select the test agencies. Under the leave bank system, federal employees would join the bank by contributing a minimum amount of annual leave based on the employee's years of service. Agencies that establish a leave bank would set up a Leave Bank Board composed of three members, one of whom must represent a labor organization or employee group, to administer the bank.

The federal leave sharing programs are not meant to be a substitute for disability retirement, and agencies should encourage employees to apply for disability retirement if circumstances warrant it. However, leave transfers should be considered for employees who have exhausted all leave in lieu of leave without pay pending actions on their claims for disability retirement or workers' compensation. Once the application has been approved, the leave recipient may not receive or use additional transferred leave and the personal emergency is considered to be terminated.

Before any annual leave transferred under the voluntary leave transfer program and the voluntary leave bank program can be used, the leave recipient must exhaust all sick and annual leave. A leave recipient may use transferred leave in the same manner and for the same purposes as if such leave recipient has accrued such leave. Transferred annual leave may accumulate without any regard to any limitation under section 6304 and may be substituted retroactively for any period of leave without pay or used to liquidate an indebtedness for any period of advanced leave.

S. 2140 limits donations to annual leave because sick leave is intended to cover short-term illnesses and should be preserved for the employee in the event he may need it. Also, the Office of Personnel Management has testified that transferring sick leave would be very costly to the government.

Leave donors and leave contributors may donate no more than a total of one-half of the amount of annual leave that they are entitled to accrue during the leave year. For example, leave donors or contributors having fifteen years or more in the federal service accrue 208 hours of annual leave per year. The maximum such persons may donate to an individual(s) or contribute to a leave bank during the leave year is 104 hours of annual leave. The donations or contributions may be made during the first pay period of the leave year as long as the donors or contributors have such hours of annual leave standing to their credit.

The Governmental Affairs Committee held a mark-up on May 19, 1988, and by voice vote, approved the referral of the bill to the Senate, with a technical amendment. As of June 13, 1988, the bill has 10 Senate cosponsors: Pryor, Inouye, Sarbanes, Adams, Sasser, Bentsen, Mikulski, Rockefeller, Domenici, Weicker, and Burdick.

VI. AGENCY VIEWS

The Committee has received the following letter from the Office of Personnel Management in support of the enactment of S. 2140:

U.S. OFFICE OF PERSONNEL MANAGEMENT,
Washington, DC, June 13, 1988.

Hon. JOHN GLENN,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: We are writing to advise you of the support of the Office of Personnel Management for S. 2140, as amended by the Committee on Governmental Affairs. The amended bill would be entitled the "Federal Employees Leave Sharing Act of 1988."

This bill would establish a 5-year, Governmentwide, voluntary leave transfer program, under which employees would be able to donate annual leave to other employees who need such leave because of a serious medical emergency. The bill would also establish 3 single-agency experiments with "leave banks," under which employees could donate annual leave to a common leave fund, and then could apply to draw leave from the fund if they encountered a medical emergency.

The Office of Personnel Management has strongly supported the establishment of a leave transfer program, and, indeed, we are now operating such a program on a temporary basis under Public Law 100-202, the fiscal year 1988 continuing resolution. The President's 1989 budget includes appropriation language to extend this program through 1989. We believe a leave transfer program offers employees a unique personal opportunity to provide a very major benefit for fellow employees who are in need.

We are less favorably inclined toward a "leave bank" approach, since we believe it would necessarily involve considerably more administrative machinery than an employee-to-employee leave transfer program, and might well, by depersonalizing the program, reduce employee support. Furthermore, it would entail additional cost to the Government, since it would give employees a ready means to utilize unused annual leave that would otherwise be forfeited. Notwithstanding these concerns, however, we are willing to conduct a limited experiment with this approach, as provided by the amended S. 2140.

We are somewhat disappointed by the highly detailed provisions of the bill, since there would be little regulatory flexibility in establishing and operating this experimental program. This is particularly true in the case of the 3 leave bank experiments, where only the size of the agency involved would distinguish the 3 experiments. We are also concerned that the bill would force OPM to select the 3 agencies in which to conduct the leave bank experiments, perhaps over the agencies' objections.

However, on balance, we believe that S. 2140, as amended by the committee, is a desirable piece of legislation, and we support its enactment.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely,

CONSTANCE HORNER,
Director.

VII. CONGRESSIONAL BUDGET OFFICE: COST ESTIMATE

Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office (CBO) has reviewed the cost implications of S. 2140. The following is CBO's estimate of the potential costs of this legislation:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 7, 1988.

Hon. JOHN GLENN,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared a revised cost estimate for S. 2140, the Federal Employees' Leave Sharing Act of 1988, as ordered reported by the Senate Committee on Governmental Affairs, May 19, 1988. This estimate supersedes the previous one dated May 20, 1988, and reflects a technical amendment changing the starting date for the commencement of the programs in the bill. This change does not affect our estimate of the budget impact of S. 2140.

There is little data on which to base an estimate of the likely participation in a federal leave-sharing program. Based on the limited information available, CBO estimates that enactment of this bill would result in additional costs of \$5 million to \$15 million annually. Once the government has some data on its pilot leave-sharing program recently initiated for fiscal year 1988, a more definitive estimate may be possible.

BILL PURPOSE

The bill would direct the Office of Personnel Management (OPM) to establish a program under which a federal employee may transfer annual leave to another federal employee who has a personal emergency, such as sickness. The program would include the following features:

An employee applying for transferred leave would receive such leave only when the agency recognizes the emergency and the applicant has used up all available leave.

An employee applying to donate leave could donate only one-half of the total number of hours of annual leave standing to the credit of the donor at the time of the transfer.

The OPM would return to each donor any unused transferred leave.

The bill also would establish a demonstration project to test voluntary leave banks at three federal agencies. Each bank would have a board to review and approve employees' applications to contribute and to receive leave from the bank.

Once the bill is enacted, the leave transfer and leave bank programs would commence six months later. Both programs would expire five years after commencing.

CURRENT LAW

A pilot leave transfer program will expire at the end of fiscal year 1988. The continuing appropriations act for 1988 (Public Law 100-202) directed OPM to issue regulations for a leave transfer program for all federal employees. OPM's regulations, issued March 8, 1988, establish a leave transfer program for individuals in 1988 similar to the one proposed in S. 2140. During 1987, leave transfers were allowed for only three individuals in a smaller pilot program.

BASIS OF ESTIMATE

Enacting S. 2140 would increase pay costs for agencies over the 1989-1991 period. Without this bill, an employee with a personal emergency who uses all earned sick and annual leave would have to go on leave without pay. The government would not be paying the employee in this case. However, under a leave-sharing program (as well as the demonstration leave bank program), the government would pay the leave recipient while continuing to pay the leave donor. In return for this payment, the government would receive the value of the additional work produced by the donor, if he or she would have otherwise used the leave. The government would gain no additional work if the donor would otherwise have forfeited the donated leave. (S. 2140 includes provisions, however, that are designed to discourage the transfer of "use or lose" leave in this program.)

The only way the government would obtain offsetting cash savings under S. 2140 would be if the donor would have accumulated and cashed in the donated leave—but such savings would likely occur in later years. The potential cost impact under various circumstances is summarized as follows:

If the donor was going to:	The Government would:
Use the leave.....	Incur additional costs, but would gain more work days from the donor.
Forfeit the leave	Incur additional costs.
Accumulate and cash in the leave	Incur additional costs initially, with reduced costs some time in the future.

For the first few years of such a leave-sharing program, agencies would have to spend additional amounts on employees' salaries. Whether this would result in additional federal outlays depends on the level of participation in the program and the way agencies decided to fund the additional costs. If the amount of transferred leave is small, an agency would likely pay for the increased salary expenses within its available appropriation by reducing planned expenditures on other items. In this case, leave transfer would not result in additional federal outlays for the fiscal year. On the other hand, if participation is sufficiently great that an agency cannot afford to fund all the additional salary payments by reducing other expenditures, additional appropriations may be required, thus increasing federal outlays. Ultimately, such costs would be included in agencies' annual appropriations.

At this time, CBO has little basis for estimating the extent to which employees would contribute to or use a leave-sharing program. (The federal government's pilot program is just starting; the State of Connecticut has had a similar leave sharing program since 1986, but data are only available for a few months.) Initial data from Connecticut indicate that 1,000 to 2,000 federal employees (0.1 percent to 0.2 percent of the approximately 1 million employees who would be covered by this bill) might use the program each year. If each receives two to three months of transferred leave, the federal government would have to pay \$5 million to \$15 million in

additional salaries that it would not have to pay if these employees were on leave without pay (assuming they are paid at the government's average civilian salary). This amount would vary depending on the number of participants, the amount of leave received, and their salary levels.

CBO expects the administrative expenses of implementing the bill would not be significant. In addition, CBO does not expect the demonstration leave bank program to affect significant the costs of the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,
Acting Director.

VIII. REGULATORY IMPACT OF LEGISLATION

Paragraph 11(b)(1) of Rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate "the regulatory impact which would be incurred in carrying out the bill".

The enactment of this bill will not have significant regulatory impact and the paperwork resulting from the enactment will be minimal.

IX. CHANGES IN EXISTING LAW

Rule XXVI of the Standing Rules of the Senate requires that changes in existing law made by the bill, as reported, be detailed in the Committee Report accompanying the bill. S. 2140 will require no changes in existing law.

X. SECTION-BY-SECTION ANALYSIS—FEDERAL EMPLOYEES LEAVE SHARING ACT OF 1988

Section 1. Short Title

Section 1 designates the Act as the "Federal Employees Leave Sharing Act of 1988."

Section 2. Voluntary Transfers of Leave

Section 2 amends chapter 63 of title 5, United States Code, by adding two new subchapters, subchapter III—Voluntary Transfers of Leave—and subchapter IV—Voluntary Leave Bank Program—containing the following sections.

SUBCHAPTER III—VOLUNTARY TRANSFERS OF LEAVE

Section 6331. Definitions

Paragraph (1) of section 6331 defines "employee" to mean an employee as defined by section 6301(2) of title 5, United States Code, excluding individuals employed by the government of the District of Columbia.

Paragraph (2) defines the term "leave recipient" to mean an employee whose application to receive donations of leave under this subchapter is approved.

Paragraph (3) defines the term "leave donor" to mean an employee whose application to make 1 or more donations of leave under this subchapter is approved.

Paragraph (4) defines the term "medical emergency" to mean a medical condition of an employee or a family member of such employee that is likely to require the prolonged absence of the employee from duty and to result in a substantial loss of income of the employee because of the unavailability of paid leave.

Section 6332. General authority

Section 6332 authorizes the Office of Personnel Management to establish a program under which annual leave accrued or accumulated by an employee may be transferred to the annual leave account of any other employee who requires additional leave because of a personal or family medical emergency.

Section 6333. Receipt and use of transferred leave

Section 6333 establishes the application procedure for transferred leave and its uses.

Subsection (a) requires an employee, or his representative, who seeks to receive donations of leave to submit to the employing agency an application which includes the employee's name, position title, and pay grade. The application must also contain the reasons why transferred leave is needed; a brief description of the nature, severity, anticipated duration; and, if it is a recurring one, the approximate frequency of the medical emergency involved. An agency may require certification of the medical condition and request any other information it needs to make a determination. The employee is required to pay for only one certification. Any additional certifications will be paid for by the agency, either through direct payment or reimbursement. An agency shall notify the proposed leave recipient of the agency's decision to approve or disapprove an application, in writing, and to the extent practicable, within ten working days after receiving the employee's application.

Subsection (b) allows a leave recipient to use annual leave received under this subchapter in the same manner and for the same purposes as though the leave recipient had accrued such leave under section 6303 of title 5, United States Code. Any annual leave and sick leave accrued or accumulated before the medical emergency began or earned while using transferred leave and available for the purpose involved, must be exhausted before an employee may use transferred leave.

Subsection (c) stipulates that transferred leave may accumulate without regard to any limitation under section 6304 of title 5, United States Code, and may be substituted retroactively for any period of leave without pay or to liquidate an indebtedness for any period of advanced leave which began on or after a date fixed by the employee's employing agency as the beginning of the medical emergency involved.

Section 6334. Donations of leave

Section 6334 establishes the procedure and the limitations on making annual leave donations.

Subsection (a) allows an employee to request, by written application, that a specified number of hours be transferred from that employee's annual leave account to the annual leave account of a leave recipient in accordance with section 6332 of this subchapter.

Subsection (b) allows a leave donor to donate no more than $\frac{1}{2}$ of the total amount of annual leave which he would be entitled to accrue during the leave year. A leave donor who is projected to have annual leave that would be subject to forfeiture at the end of the leave year under 5 U.S.C. 6304(a) may donate no more than the number of hours remaining in the leave year (at the date of transfer) for which the leave donor is expected to work and receive pay. Agencies may waive the limitations. The waiver must be in writing.

Section (c) requires the Office of Personnel Management to include in its regulations procedures to carry out this subchapter when the leave donor and the leave recipient are in different agencies.

Section 6335. Termination of medical emergency

Section 6335 defines the termination of a medical emergency.

Subsection (a) provides that a medical emergency affecting a leave recipient shall be considered to have terminated on the date that the leave recipient notifies the individual's employing agency, in writing, that the emergency is over; when the employing agency determines, after written notice and opportunity for the leave recipient (or, if appropriate, another person acting on behalf of the leave recipient) to answer orally, or in writing, that the medical emergency no longer exists; or when the employment of the leave recipient terminates.

Subsection (b) requires agencies to establish procedures to prohibit the use or receipt of transferred leave by a leave recipient once the medical emergency has ended. In addition, sections 5551, 5552, and 6303 of title 5, United States Code, concerning lump-sum payments for leave, shall not apply with respect to any annual transferred to a leave recipient under this subchapter.

Section 6336. Restoration of transferred leave

Section 6336 explains how transferred leave shall be restored.

Subsection (a) requires the Office of Personnel Management to establish procedures to restore any transferred leave remaining to the credit of a leave recipient at the end of a medical emergency. The transferred leave shall be restored on a prorated basis to the appropriate leave accounts of the respective leave donors. Leave need not be restored if the amount of leave which would be restored is less than one hour; if the donor retires, dies, or is otherwise separated from service; or if restoration of leave is not administratively feasible.

Subsection (b) states that a leave donor who is restored transferred leave may elect to have such leave restored to his account in the current leave year or in the following leave year. The leave donor may also choose to donate such leave, in whole or part, to another leave recipient or to a leave bank as established under subchapter IV.

Subsection (c) requires the Office of Personnel Management to prescribe regulations under which this section shall be applied for employees who are paid on other than a biweekly pay period basis.

Subsection (d) requires that the restorations of leave under this section shall be carried out in a manner consistent with regulations prescribed to carry out section 6334(c), if applicable.

Section 6337. Prohibition of coercion

Section 6337 prohibits employees from forcing any other employee to contribute to the leave transfer program. Any employee who is intimidated, threatened or coerced may allege a prohibited personnel action as provided under current law.

Subsection (a) prohibits employees from directly or indirectly intimidating, threatening, or coercing, or attempting to intimidate, threaten, or coerce, any other employee for purposes of interfering with an employee's right to contribute, receive, or use annual leave under this subchapter.

Subsection (b) defines the term "intimidate, threaten, or coerce", for the purpose of this subsection, to include promises to confer, or conferring any benefit (such as an appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

Subsection (c) provides that an employee who is intimidated, threatened, or coerced as prohibited under this section may allege a prohibited personnel practice under sections 2306(b) (10) and (11) of this title.

Section 6338. Additional leave transfer programs

Section 6338 excepts certain agencies from the Government-wide leave transfer program, but requires these excepted agencies to establish their own leave transfer programs consistent with the Government-wide transfer program.

Subsection (a) defines the term "excepted agency" to mean the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, the Federal Bureau of Investigation, and, as determined by the President, any Executive agency or unit whose principal function is to conduct foreign intelligence or counterintelligence activities. Subsection (a) also defines the term "head of an excepted agency" to mean the Director of an "excepted agency".

Subsection (b) stipulates that neither an excepted agency nor any individual employed in an excepted agency may be included in a leave transfer program under any of the preceding provisions of this subchapter.

Subsection (c) requires the head of an excepted agency to establish, by regulation, and to the extent practicable, a voluntary leave-transfer program consistent with the provisions of this subchapter. Such a leave transfer program is precluded from allowing transfers or restorations of leave between employees in different agencies.

Subsection (d) directs the Office of Personnel Management to provide the heads of the excepted agencies any device or assistance as they may request in carrying out the purposes of this section.

Section 6339. Inapplicability of certain provisions

Section 6339 states that except to the extent the Office of Personnel Management may prescribe regulations, nothing in section 7351 of title 5, United States Code, shall apply with respect to a solicitation, donation, or acceptance of leave under this subchapter.

SUBCHAPTER IV—VOLUNTARY LEAVE BANK PROGRAM

Section 6361. Definitions

Paragraph (1) of section 6361 defines "employee" to mean an employee as defined by section 6301(2) of title 5, United States Code, excluding individuals employed by the government of the District of Columbia. Paragraph (2) defines the term "executive agency" to mean an executive agency or any administrative unit thereof.

Paragraph (3) defines the term "leave bank" to mean the aggregate leave time contributed by leave contributors of an agency and established in a bank by an agency under section 6363. Paragraph (4) defines the term "leave contributor" to mean an employee who contributes leave to an agency leave bank under section 6365.

Paragraph (5) defines the term "leave recipient" to mean an employee whose application under section 6367 to receive contributions of leave from a leave bank is approved.

Paragraph (6) defines the term "medical emergency" to mean a medical condition of an employee or the employee's family member that is likely to require the prolonged absence of the employee from duty and to result in a substantial loss of income to such employee because of the unavailability of paid leave.

Section 6362. General authority

Subsection (a) authorizes the Office of Personnel Management to establish a program under which annual leave accrued or accumulated by an employee may be contributed to a leave bank established by the employee's agency. An employee experiencing a medical emergency may apply for the leave from a leave bank.

Subsection (b) requires the Office of Personnel Management to select at least three executive agencies to establish demonstration projects to test a voluntary leave bank program. One such agency should include no less than 100,000 full-time equivalent positions, one agency should include no less than 25,000 full-time equivalent positions, and one agency should include no less than 1,000 full-time equivalent positions.

Section 6363. Establishment of leave banks

Section 6363 requires that each agency that establishes a leave bank program follow the regulations prescribed by the Office of Personnel Management.

Section 6364. Establishment of Leave Bank Boards

Section 6364. Establishment of Leave Bank Boards to administer leave banks.

Subsection (a) requires each agency that establishes a leave bank to establish a Leave Bank Board consisting of three members, at least one of whom must represent a labor organization or employee group, to administer the leave bank. An agency may establish more

than one Leave Bank Board based upon the administrative units within the agency. However, no more than one Board may be established for each leave bank.

Subsection (b) gives each Board the authority to review and approve leave bank applications under section 6367, to monitor each leave recipient's case, to monitor the amount of leave in the leave bank and the number of applications for use of leave from the leave bank, and maintain an adequate amount of leave in the leave bank to the greatest extent practicable.

Section 6365. Contributions of annual leave

Section 6365 establishes the enrollment process and limitations in making annual leave contributions to the bank.

Subsection (a) states that an employee may, by written application to the Leave Bank Board, request that a specified numbers of hours be transferred from the employee's annual leave account to the agency's leave bank. An employee may state a concern and desire to aid a proposed leave recipient or an actual leave recipient.

Subsection (b) allows a leave contributor to contribute no more than $\frac{1}{2}$ of the total amount of annual leave which he would be entitled to accrue during the leave year. If it is projected that a leave contributor would be subject to forfeiture of annual leave at the end of the leave year under 5 U.S.C. 6304(a) then he may contribute no more than the number of hours remaining in the leave year (at the date of transfer) for which the leave contributor is expected to work and receive pay.

Subsection (c) allows the Leave Bank Boards of a leave contributor to waive the limitations. Such waivers must be in writing.

Subsection (d) requires the Office of Personnel Management to prescribe regulations establishing an open enrollment period during which an employee may contribute leave for a leave year.

Section 6366. Eligibility for leave recipients

Section 6366 describes the leave recipients' eligibility and minimum contribution requirements.

Subsection (a) states that to be eligible to be a leave recipient, an employee experiences a medical emergency, applies for leave, and contributes the minimum number of accrued or accumulated annual leave to the leave bank in the leave year that the employee submits the application to be a leave recipient, and has made such contribution prior to submitting an application.

Subsection (b) requires an employee to contribute a minimum number of hours based on the employee's number of years of service. For less than three years of federal service, the minimum contribution is 4 hours; for between three and less than fifteen years of service, the minimum contribution is six hours; and for fifteen years or more of service, the minimum contribution is eight hours. The Leave Bank Board of any agency, after consulting with the Office of Personnel Management, may reduce the minimum number of hours required under paragraph (1) if there is a surplus of hours in a leave bank. It also may increase the number of minimum hours required under paragraph (1) for the succeeding leave year if there is a shortage of leave in the leave bank.

Subsection (c) states that an employee meets the eligibility requirements to be a leave recipient if he completes one year of federal service and contributes the minimum number of hours required to the leave bank to which he submits an application to be a leave recipient.

Subsection (d) states that the provisions of subsection (a) does not limit the amount of voluntary contributions of annual leave to a leave bank (as long as it does not exceed the limitations of section 6365(b)).

Section 6367. Receipt and use of leave from a leave bank

Section 6367 establishes the leave bank application procedure and the uses of such leave.

Subsection (a) requires an employee who seeks to receive contributions of leave from a leave bank to submit to the employing agency's Leave Bank Board an application which includes the employee's name, position, title, and pay grade. The application must also contain the reasons why leave is needed; a brief description of the nature, severity, anticipated duration; and, if it is a recurring one, the approximate frequency of the medical emergency involved. A Leave Bank Board may require certification of the medical condition and request any other information it needs to make a determination. The employee is required to pay for only one certification. Any additional certifications will be paid for by the agency, either through direct payment or reimbursement.

Subsection (b) authorizes the Leave Bank Board of an employing agency to approve applications.

Subsection (c) allows leave recipients to use annual leave received under this subchapter in the same manner and for the same purposes as though the leave recipient had accrued such leave under Section 6303 of title 5, United States Code. Any annual leave and sick leave accrued or accumulated before the medical emergency began or earned while using transferred leave and available for the purpose involved, must be exhausted before the leave recipient uses leave from the leave bank.

Subsection (c) stipulates that transferred leave may accumulate without regard to any limitation under section 6304 of title 5, United States Code, and may be substituted retroactively for any period of leave without pay or to liquidate an indebtedness for any period of advanced leave which began on or after a date fixed by the employee's employing agency as the beginning of the medical emergency involved.

Subsection (d) states that except to the extent the Office of Personnel Management may prescribe regulations, nothing in section 7351 of title 5, United States Code, shall apply with respect to a solicitation, donation, or acceptance of leave under this subchapter.

Section 6368. Termination of medical emergency. Section 6368 defines the termination of a medical emergency

Subsection (a) provides that a medical emergency affecting a leave recipient shall be considered to have terminated on the date that the leave recipient notifies the Leave Bank Board, in writing, that the medical emergency is over; when the Leave Bank Board determines, after written notice and opportunity for the leave re-

recipient (or, if appropriate, another person acting on behalf of the leave recipient) to answer orally, or in writing, that the medical emergency no longer exists; when the employment of the leave recipient terminates; or when the leave recipient is separated from service.

Subsection (b) requires the Leave Bank Board of a recipient to establish procedures to prohibit the use or receipt of transferred leave by a leave recipient once the medical emergency is over. In addition, sections 5551, 5552, and 6303 of title 5, United States Code, concerning lump-sum payments for leave, shall not apply with respect to any annual leave transferred to a leave recipient under this subchapter.

Section 6369. Restoration of transferred leave

Section 6369 requires the Office of Personnel Management to establish procedures to restore a leave recipient's unused leave to the leave bank.

Section 6370. Prohibition of coercion

Section 6370 prohibits employees from forcing other employees to contribute to the voluntary leave bank program. Any employee who is intimidated, threatened or coerced may allege a prohibited personnel action as provided under current law.

Subsection (a) prohibits employees from directly or indirectly intimidating, threatening, or coercing, or attempting to intimidate, threaten or coerce, any other employee for purposes of interfering with an employee's right to contribute, receive, or use annual leave under this subchapter.

Subsection (b) defines the term "intimidate, threaten, or coerce", for the purpose of this subsection, to include promises to confer, or conferring any benefit (such as an appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

Subsection (c) provides that an employee who is intimidated, threatened, or coerced as prohibited under this section may allege a prohibited personnel practice under sections 2306(b) (10) and (11) of this title.

Paragraph (c) requires the head of each agency to establish leave transfer, and leave bank programs no later than 6 months after the date of enactment of this Act. The Office of Personnel shall prescribe regulations necessary to implement these programs.

Paragraph (d) repeals the leave transfer and leave bank programs effective 5 years after their commencement date.

Paragraph (e)(1) requires OPM to report to the Congress on the operation of these programs (excluding the excepted agencies under subchapter III, section 6338), within two years after the date of enactment of this Act, and not later than six months before the scheduled termination of these programs. OPM may require agencies to keep records and provide any necessary information in order to meet this requirement.

Paragraph (e)(2) requires the excepted agencies to report to the Congress on the operation of these programs, within two years after the date of enactment of this Act, and no later than six months before the scheduled termination of these programs.

Paragraph (f) states that the temporary leave transfer program established by section 625 of the Treasury, Postal Service, and General Government Appropriations Act, 1988, as incorporated in section 101(m) of P.L. 100-202 shall be continued until the programs established by this Act take effect.

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